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Chairman: Mr. Bennouna ..... (Morocco)

Contents

Tribute to the memory of Mr. Robert Rosenstock, representative of the United States of America in the Sixth Committee

Organization of work

Statement by the Legal Counsel

Agenda item 143: Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session

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04-53300 (E)

The meeting was called to order at 3.10 p.m.

Tribute to the memory of Mr. Robert Rosenstock, representative of the United States of America in the Sixth Committee

1. **Mr. Tuerk** (Austria), **Mr. Guan** Jian (China), **Mr. Adsett** (Canada), **Mr. Playle** (Australia), **Mr. Rosand** (United States of America), **Mr. Llewellyn** (United Kingdom), **Mr. Medrek** (Morocco), **Mr. Tajima** (Japan) and **Mr. Lavalle** (Guatemala) paid tribute to the memory of Robert Rosenstock.

2. *At the invitation of the Chairman, the members of the Committee observed a minute of silence.*

Organization of work (A/C.6/59/1 and Add.1 and A/C.6/59/L.1)

3. **The Chairman** drew attention to the allocation of agenda items to the Committee as contained in document A/C.6/59/1 and Add.1 and to the note by the Secretariat on organization of work (A/C.6/58/L.1). The General Assembly had decided to allocate an additional agenda item to the Committee, namely, item 159, entitled "Observer status for the Economic Community of West African States in the General Assembly".

4. With regard to the establishment of working groups, he recalled that the General Assembly, in its resolution 58/81, had decided that the work of the Ad Hoc Committee established by General Assembly resolution 51/210 should continue, if necessary, during the fifty-ninth session of the General Assembly within the framework of a working group of the Sixth Committee. The Ad Hoc Committee's task was to elaborate a draft comprehensive convention on international terrorism, with appropriate time allocated to issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, while keeping on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint response of the international community to terrorism in all its forms and manifestations. In the light of the recommendation of the Ad Hoc Committee contained in paragraph 14 of its report (A/59/37), he took it that the Committee wished to establish a working group, chaired by Mr. Perera (Sri Lanka), to continue the work of the Ad Hoc Committee, and that the working group, like the Ad Hoc Committee, would be open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency.

5. *It was so decided.*

6. **The Chairman** recalled that, in accordance with General Assembly resolution 58/82, the Ad Hoc Committee established under resolution 56/89 had reconvened in 2004, with a mandate to expand the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, including by means of a legal instrument. The Assembly had decided that the work of the Ad Hoc Committee should be continued during the fifty-ninth session of the General Assembly within the framework of a working group of the Sixth Committee. He took it that the Committee wished to establish a working group chaired by Mr. Wenaweser (Liechtenstein) to continue the work of the Ad Hoc Committee and that the working group, like the Ad Hoc Committee, would be open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency.

7. *It was so decided.*

8. **The Chairman** noted that the proposed timetable contained in paragraphs 3 to 6 of the note on organization of work (A/C.6/59/L.1) indicating approximate dates for the consideration of the agenda items allocated to the Committee was the outcome of consultations with the Bureau of the Committee. The question time called for by General Assembly resolution 58/316, annex, paragraph 3 (d), would be conducted in an informal meeting. He took it that the Committee wished to proceed with the proposed programme of work, on the understanding that it would be applied with flexibility in the light of the progress made by the Committee and the difficulties encountered, and that the Committee would take action on draft resolutions as soon as they were ready for adoption.

9. *It was so decided.*

10. **The Chairman** said that the programme of work just agreed upon took into account the need for efficient utilization of time and resources. During the fifty-eighth session, the Committee had lost approximately seven hours owing to late starts and early endings. That figure marked an improvement

over the figures for the fifty-seventh session, but could be further improved upon if delegations were punctual so that meetings could start on time, and if they were prepared to consider the next item on the agenda in order to utilize time left at the end of the meeting.

Statement by the Legal Counsel

11. **Mr. Michel** (Under-Secretary for Legal Affairs, The Legal Counsel) said that over the years the Sixth Committee had contributed to the development of a truly universal body of international law, one that took into account the political, economic, social and cultural diversity of the modern world and reaffirmed the principles of the Charter of the United Nations. Currently, the international legal system was under great strain and, as the Secretary-General had recently noted, the rule of law was at risk around the world. The Committee remained a crucial collegial forum for promoting and enhancing the rule of law in international relations.

12. There was, however, some progress to report. As depositary of multilateral treaties, the Secretary-General had registered over 100 signatures, ratifications and accessions. Notably, there had been three new ratifications of the Rome Statute of the International Criminal Court, bringing the number of States parties to 97. That very day the Secretary-General and the President of the International Criminal Court had signed a relationship agreement between the United Nations and the Court.

13. The staff of the Office of Legal Affairs had always supported the Committee's work with a deep sense of commitment, professionalism and independence and had carried out their functions with the highest standards of efficiency, competence and integrity. It was his intention to continue that tradition.

Agenda item 143: Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session (A/59/17)

14. **Mr. Wisitsora-At** (Chairman of the United Nations Commission on International Trade Law (UNCITRAL)), introducing the report of the United Nations Commission on International Trade Law (UNCITRAL) (A/59/17), said that at its thirty-seventh session the Commission had finalized and adopted the UNCITRAL legislative guide on insolvency law. It had also considered 12 other substantive items, including the progress reports of its working groups on arbitration, transport law, electronic commerce and security interests; the revision of its 1994 Model Law on Procurement of Goods, Construction and Services; practical means to enhance its coordination function; and training and technical assistance.

15. In 2000, when work on the legislative guide had commenced, doubts had been expressed that it could be brought to a successful conclusion given the sensitive and potentially divisive social and political issues involved. However, the Commission had proved that it could deal expeditiously with complex issues, approving the draft legislative guide in principle at its thirty-sixth session, and circulating it to the relevant parties for comments that had been taken into account as the text had been finalized. The support of Governments and international organizations, without which success could not have been achieved, was further evidence of the importance that all countries attached to strong and effective insolvency and reorganization regimes. The legislative guide contained flexible approaches to the establishment of a strong insolvency, debtor-creditor regime, and emphasized reorganization of insolvency proceedings. Together with the 1997 UNCITRAL Model Law on Cross-Border Insolvency, the legislative guide would be a useful reference both for States lacking an effective insolvency regime and for those in the process of reviewing and modernizing such regimes. The Commission hoped that the General Assembly would endorse its recommendation that all States should utilize the legislative guide (A/59/17, para. 55).

16. Working Group II (Arbitration and Conciliation) had made commendable progress in its revision of the 1985 UNCITRAL Model Law on International Commercial Arbitration related to interim measures of protection, although ex parte interim measures were still a controversial issue.

17. Working Group III (Transport Law) had proceeded with the second reading of the draft instrument on the carriage of goods [wholly or partly] [by sea]. Some difficult issues remained to be resolved, but the Commission had agreed that it would be desirable to complete the project in 2006. It would review that deadline at its next session in 2005.

18. Working Group IV (Electronic Commerce) had made good progress in elaborating a draft convention dealing with selected issues of electronic contracting,

and the Commission expected to finalize the draft at its next session.

19. Working Group VI (Security Interests) continued its work on a draft legislative guide on secured transactions, the purpose of which was to promote the availability of low-cost secured credit. The Working Group had just completed another reading of most of the draft guide's revised chapters.

20. Working Group I (Procurement) had been entrusted with the task of revising the Model Law on Procurement of Goods, Construction and Services. The Working Group had recently held its first session under the new mandate, at which it had laid out the scope of its work and formulated policy guidelines concerning key issues to be addressed in revising the Model Law and its Guide to Enactment.

21. The time and money invested by the international community in the preparation of legislative texts would be wasted unless the texts were adopted and uniformly applied and interpreted. Accordingly, the Commission, assisted by its secretariat, had undertaken activities complementing the preparation of its texts, including the completion of a digest of case law on the United Nations Convention on Contracts for the International Sale of Goods (United Nations Sales Convention) and a digest of case law relating to the UNCITRAL Model Law on International Commercial Arbitration.

22. The year 2005 marked the twenty-fifth anniversary of the adoption of the Convention and the twentieth anniversary of the adoption of the Model Law. Commemorative events were being organized in various regions of the world, and the Commission hoped that the General Assembly would acknowledge the importance of those instruments.

23. Coordination and cooperation among relevant international organizations were essential to the harmonization and unification of international trade law. As more organizations became involved in the reform of such law, the risk of duplication of effort and inconsistent results increased. In the exercise of its coordination function, the Commission had organized the Colloquium on International Commercial Fraud, held in Vienna from 14 to 16 April 2004, which had brought together appropriate public and private bodies to address aspects of commercial fraud from the private law perspective.

24. The coordination function, as the basic element of the Commission's mandate, could not be delegated to other organizations. The General Assembly had reaffirmed the Commission's leading role in that regard and the Commission was therefore considering further steps to expand that function. The Commission's budget had remained modest in comparison to its needs, and it was therefore important to emphasize the need for continued availability of financial resources, including contributions to the Trust Fund for UNCITRAL Symposia.

25. **Mr. Tuerk** (Austria) noted with satisfaction the increase in the membership of UNCITRAL pursuant to General Assembly resolution 57/20. The 24 additional members who had taken office at the thirty-seventh session had enriched the Commission's discussions. Austria was also pleased that the Commission's secretariat had been strengthened to enable it to cope with its ever-expanding workload. UNCITRAL and its secretariat must continue and intensify their efforts to coordinate legal activities so as to avoid duplication of work.

26. The Commission's most important achievement during the past year had undoubtedly been the adoption of the UNCITRAL legislative guide on insolvency law, to which the UNCITRAL Model Law on Cross-Border Insolvency and the Guide to Enactment were annexed.

27. Austria attached particular importance to the work on a draft guide on security interests and looked forward to its early submission and adoption.

28. His delegation further welcomed the decision to revise and update the UNCITRAL Model Law on Procurement of Goods, Construction and Services. The Commission's secretariat was to be commended for having organized the Colloquium on International Commercial Fraud held in Vienna in April 2004.

29. The Vienna Diplomatic Conference of 1980 had led to the adoption of the United Nations Sales Convention. The forthcoming twenty-fifth anniversary of that event marked one of the Commission's most important achievements. The 63 parties to the Convention currently accounted for two thirds of the total volume of world trade, making it one of the most important instruments of international trade law.

30. In a broader context, the legal standards, model laws and legal guides formulated by UNCITRAL greatly enhanced access to international trade, which in

turn contributed to peace and stability throughout the world.

31. **Mr. Guan** Jian (China) said that UNCITRAL was one of the most important United Nations bodies entrusted with formulating norms of international trade law. The conventions and model laws drafted by UNCITRAL had been widely applied in many countries, and that had contributed to the development of international trade.

32. His delegation recommended, first, that UNCITRAL should step up its assistance and training for the benefit of its members, especially developing countries. Second, in order for the conventions and model laws to achieve their full impact, they must be accepted by a wider group of States. To that end, UNCITRAL should be more open to the views and suggestions of all sides, and should take into account the situations prevailing in different countries.

33. Lastly, his Government called on the General Assembly to lend greater support to the work of UNCITRAL.

34. **Mr. Adsett** (Canada) commended the Commission on its completion of the UNCITRAL legislative guide on insolvency law, which would be useful to States considering legislation in that area. He looked forward to the finalization in 2005 of the draft international instrument dealing with electronic contracting. As for secured interests, the draft guide currently being prepared constituted a unique tool for legislators aiming to facilitate modern financing mechanisms.

35. His delegation supported the work done behind the scenes by the Commission secretariat to implement UNCITRAL instruments and disseminate information around the world. In view of the importance of the Commission's work in promoting the development and harmonization of international commercial law, he expressed concern at the possibility that measures to limit the cost of United Nations documentation would be applied to UNCITRAL. Full reporting of its deliberations — including the reasoning behind the choices made in the draft texts — helped States to fully understand the policy considerations that gave rise to the provisions of a given instrument. The Commission's *travaux préparatoires* were essential aids to the later interpretation and application of the instruments concerned.

36. **Mr. Playle** (Australia) said that UNCITRAL was a model member of the United Nations family, with its broad representation and outward-looking focus on work of great relevance to the international community. In that connection, his delegation, which had been involved with the Commission's work from its inception, was pleased to note the creation of the International Trade Law Division within the Office of Legal Affairs. The new division would be effective in providing enhanced training and technical legal assistance for developing countries and countries with economies in transition.

37. His delegation welcomed the completion of the UNCITRAL legislative guide on insolvency law and the progress made on the draft instrument on the international carriage of goods by sea. Of particular importance were the issues of electronic commercial shipping documents, the abolition of the nautical fault defence and access to the temperature records held by the carrier for temperature-controlled goods.

38. As to Working Group II (Arbitration and Conciliation), his delegation hoped that it would be able to resolve the issue of ex parte interim measures; the current delay was detrimental to the Commission's work.

39. As far as the updating of the UNCITRAL Model Law on Procurement of Goods, Construction and Services was concerned, his delegation would seek more emphasis on issues relating to confidentiality, security and the authentication and registration through the Internet of tender-management systems.

40. **Mr. Rosand** (United States of America) said that UNCITRAL had continued to provide the tools needed by States to upgrade their commercial law regimes so that they could expand the base of their economies and participate in the growth of global trade. The Commission's success in producing technically focused and non-politicized work reflecting modern transactions, market realities and new trends in dispute resolution was due largely to its dedicated and professional staff. His delegation was therefore pleased to note that the Trade Law Branch would be given the resources needed to support its reorganization of work, in terms both of preparing international trade law instruments and of providing States with technical assistance.

41. The newly adopted UNCITRAL legislative guide on insolvency law could bring about real change in

economic development. Almost all international financial institutions believed that progress in the fields of insolvency law and secured finance were the key to upgrading the world's economies, and the Commission had successfully completed the second of its two major texts on insolvency law reform. In that connection, he noted that the first such text — the UNCITRAL Model Law on Cross-Border Insolvency — was pending before the United States Congress for enactment into the bankruptcy laws. It was to be hoped that other States would take similar action.

42. The Commission was to be commended on the progress made on a number of major issues involving commercial arbitration and dispute resolution and on the drafting of multilateral conventions relating to transport law and electronic commerce. The outstanding work of the secretariat was crucial to the application by courts, arbitrators, transacting parties, financing parties and others of international texts that were often many years in the making. His delegation would support the draft resolutions on the work of the Commission and on the adoption of the UNCITRAL legislative guide on insolvency law.

43. **Mr. Llewellyn** (United Kingdom) said that the UNCITRAL legislative guide on insolvency law was an excellent product, resulting from well-informed, constructive and cooperative debate and from hard work on the part of the Commission's secretariat. His delegation was, however, concerned about the controversy surrounding the issue of ex parte interim measures, under consideration by Working Group II (Arbitration and Conciliation), which should not be allowed to delay progress on the revision of the UNCITRAL Model Law on International Commercial Arbitration. Failure to reach consensus would be detrimental to the work of the Commission in general.

44. His delegation endorsed the Commission's request that the General Assembly should reconsider the application of page limits to the Commission's work. Economies should be achieved wherever possible, but detailed and high-quality documentation was essential to assisting States in understanding and interpreting the legal rules prepared by the Commission.

45. **Ms. Collet** (France) welcomed the successful completion of the work on the UNCITRAL legislative guide on insolvency law, which would enable States to modernize their legislation in that regard, but would be equally useful to investors. Progress had also been made with the ambitious project of a legislative instrument on the international carriage of goods by sea and with the draft guide on secured transactions, which would be a most significant achievement. The expansion of the Commission to 60 members was a welcome step and her delegation looked forward to active participation by the new members in the years to come.

46. The work of the Commission was indispensable. The establishment of the International Trade Law Division was therefore a welcome development. The added resources would enable the secretariat to maintain the excellence of its work. It should also enable the Commission to use independent experts whose judgement would be impartial, unlike that of professional bodies, which, naturally, defended the interests of their members.

47. Lastly, her delegation wished to emphasize the importance of the working languages in the Commission. Full participation by delegations, especially French-speaking ones, in a highly technical field was essential and the translation services should therefore be assured of the support required to enable the Commission to fulfil its mandate.

48. **Mr. Medrek** (Morocco) commended Working Group V (Insolvency Law) on its accomplishment in finalizing the UNCITRAL legislative guide on the topic. The guide would help to strengthen modern commercial law by providing States with an effective and efficient insolvency regime.

49. Progress had also been made by Working Group VI (Security Interests), which had completed the second reading of the draft guide on secured transactions. His delegation supported the Group's efforts to coordinate its work on conflict of laws with the Hague Conference on Private International Law and the International Institute for the Unification of Private Law (Unidroit). It further encouraged the Working Group to continue its efforts to submit a preliminary set of recommendations by early 2005 and to prepare additional chapters on various types of assets.

50. With regard to Working Group III (Transport Law), his delegation believed that it would be desirable to complete a third reading of the draft instrument on the carriage of goods by sea with a view to its adoption by UNCITRAL in 2006.

51. In the area of electronic commerce, Morocco believed that an international instrument dealing with certain issues of electronic contracting would facilitate the use of modern means of communication in cross-border commercial transactions.

52. Substantial progress had also been made in the area of arbitration, particularly on the issues of interim measures of protection and public procurement. His delegation welcomed the proposal for the revision of the UNCITRAL Model Law on Procurement of Goods, Construction and Services in order to take account of issues arising from the use of electronic communications in public procurement.

53. The Moroccan delegation welcomed the decision to publish the digests of case law on the United Nations Sales Convention and the UNCITRAL Model Law on International Commercial Arbitration in 2005 to mark the twenty-fifth and twentieth anniversaries of their adoption. The digests should be widely disseminated in the six official languages of the United Nations in print and electronic form.

54. His delegation attached great importance to training and technical assistance activities designed to meet the needs of developing countries and States with economies in transition. Greater efforts should be made to enable African States to participate in a larger number of training seminars so that their interests would be reflected in UNCITRAL texts. Morocco expressed appreciation to all States and international organizations which had made contributions to the Trust Fund for UNCITRAL Symposia.

55. **Mr. Tajima** (Japan), after welcoming the expansion of the Commission, said that the UNCITRAL Model Law on Procurement of Goods, Construction and Services, for all its success in promoting the harmonization of domestic procurement laws, needed to be revised in response to such developments as the use of electronic communication in the area of procurement. He trusted that Working Group I (Procurement) would be able to meet that challenge.

56. The new Japanese law on arbitration, amended in 2003 in accordance with the UNCITRAL Model Law on International Commercial Arbitration, had been translated into English and would shortly be posted on a web site. Alternative dispute settlement, including arbitration, was being used more frequently as a means of facilitating speedy dispute settlement. In that context, his delegation had been interested in the discussion within the Working Group concerning the written form of arbitration agreements and interim measures. In that context, work on the revision as a whole should not be delayed by prolonged discussion of the issue of ex parte interim measures.

57. The progress achieved by Working Group III on a legislative instrument relating to the international carriage of goods by sea was encouraging, since such an instrument would establish clear rules for resolving problems not addressed by existing legal frameworks. Careful deliberation would, however, be required with regard to some difficult issues, including that of the scope of application.

58. Japan had enacted a special law on consumer contracts concluded by electronic means and therefore urged Working Group IV (Electronic Commerce) to proceed with care, in view of the importance of the issues involved.

59. The adoption of the UNCITRAL legislative guide on insolvency law was to be commended. The formulation of a legislative guide for security interests was also essential, but it would be necessary to address the difficult question of how to treat rules of private international law while constructing a harmonized international legal regime.

60. **Mr. Shunmugasundaram** (India) said that the main task in designing a general insolvency law was to balance the priorities of various stakeholders in the liquidation process and ensure that it did not become bogged down in procedural formalities. The essence of the procedure recommended by UNCITRAL was speed. He therefore expected the UNCITRAL legislative guide on insolvency law to serve as an important reference for all countries engaged in evolving an effective legislative framework for insolvency proceedings.

61. Working Group II (Arbitration) had been unable to arrive at a consensus on ex parte interim measures. While all efforts should be made to reconcile differing positions, his delegation believed that disagreement on that issue should not impede the Group's progress.

62. With regard to possible areas of future work, his delegation urged caution in undertaking a revision of the 1976 UNCITRAL Arbitration Rules, which enjoyed widespread recognition and had served as a model for many dispute settlement mechanisms. India welcomed

the proposal to celebrate the twentieth anniversary of the adoption of the 1985 UNCITRAL Model Law on International Commercial Arbitration in 2005 by organizing commemorative events in many regions.

63. While welcoming the progress made by Working Group III (Transport Law), he said that as a number of difficult issues remained open for discussion, it might be premature to propose deadlines for completion of a text.

64. His delegation noted with satisfaction the progress made by Working Group VI (Security Interests), particularly its coordination with the World Bank, and the agreement that the World Bank text would form with the draft legislative guide on secured transitions a single international standard.

65. Lastly, he expressed concern about the application of the uniform page limits rule to UNCITRAL documents. The Commission's work differed from that of other bodies. The length of its documents depended on a number of factors, such as the nature of the topic and relevant legal practice. For that reason, uniform page limits might not be appropriate for all United Nations bodies. His delegation also shared the Commission's view that its *travaux préparatoires* were indispensable to legislative deliberations and to judicial interpretation and differed fundamentally from summaries of meetings devoted to other types of deliberation.

66. **Mr. Lavalle** (Guatemala) noted that his Government, which had not been a member of UNCITRAL since 1985, had rejoined it in 2004. In so doing, it had been impressed by the scope and degree of complexity of the Commission's work on the draft legislative guide on insolvency law. It could not be otherwise, given the range of legitimate interests which an insolvency regime must seek to satisfy, the various methods which might be used to arrive at compromise formulas, and the deep differences between the legal traditions of various countries. While it might be thought that such a guide would be of universal value, it would be difficult for a country with rudimentary insolvency laws to derive maximum benefit from it unless certain conditions were met.

67. First, the legislative body must be aware of the importance to the country of having an effective insolvency law. In addition, political priorities must not distract the legislature from dealing with a rather specialized topic. Lastly, the public must view the adoption of such a law as a matter of national interest, to say nothing of its importance to foreign investors and the other considerations set out in the third, fourth and fifth preambular paragraphs of the Commission's decision contained in paragraph 55 of its report.

68. For the UNCITRAL legislative guide on insolvency law to thrive in a particular country, especially a developing country, technical assistance must be locally available. In addition, the guide should be addressed not only to legislators and lawyers, but also to the general public.

69. Lastly, he stressed the need to adopt model legislative provisions as a complement to the guide, as had been done in connection with privately financed infrastructure projects.

The meeting rose at 5.45 p.m.